No. 913

In the Supreme Court of the United States

OCTOBER TERM, 1941

AMERICAN CHICLE COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 913

AMERICAN CHICLE COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES

Although we believe the decision of the court below to be correct, we do not oppose the granting of a writ of certiorari in this case.

The question involved is the correct method of computing the foreign tax credit allowable to a domestic corporation which receives dividends from a foreign corporation in which it owns a majority of the voting stock. Under the provisions of Section 131 (f) of the Revenue Act of 1936, c. 690, 49 Stat. 1648, and Section 131 (f) of the Revenue Act of 1938, c. 289, 52 Stat. 447 (which sections are identical), the domestic corporation is to be "deemed" to have paid the foreign tax with

445422—42

respect to such dividends. Petitioner contends that the foreign tax "deemed" paid by the parent is the specified proportion of the entire tax paid by the subsidiary with respect to the income of the year to which the distribution relates. The Government contends that the foreign tax "deemed" paid by the parent is a portion of the tax which was paid "upon or with respect to the *accumulated profits*" from which distribution was made, "accumulated profits" being defined by the statute as the total profits for the year less taxes paid to the foreign country. The court below has correctly interpreted this section as limiting the foreign tax credit to that portion of the taxes attributable to the dividends distributed which was paid upon or with respect to the "accumulated profits."

The question involved is one of importance in the administration of the revenue laws. A provision similar to that here involved has been included in all the Revenue Acts since the 1921 Act and is now incorporated in Section 131 (f) of the Internal Revenue Code. Many large domestic corporations operate foreign subsidiaries and the question here presented is constantly arising in connection with the audit of their returns.

Two Circuit Courts of Appeals, the Second Circuit in *F. W. Woolworth Co.* v. *United States*, 91 F. (2d) 973, certiorari denied, 302 U. S. 768, and the Third Circuit in *Aluminum Co. of Amer-*

ica v. *United States*, 123 F. (2d) 615, have differed with the Court of Claims in their interpretation of the statutory language here involved. It is true that the *Wooolworth Co.* and *Aluminum Co.* cases involved years during which the Commissioner of Internal Revenue followed a different method in computing the foreign tax credit.[1] While they perhaps may be distinguished on that ground the fact that the courts have differently interpreted identical statutory language is bound to produce confusion unless the issue is authoritatively settled by this Court.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

FEBRUARY 1942.

---

[1] The change in administrative practice occurred in 1930, as the result of changing the form upon which the credit was computed, but this change was not reflected in the regulations until the promulgation of Treasury Regulations 77, under the Revenue Act of 1932. Petitioner herein contends that the earlier method of computation is correct. The change in practice, however, was entirely proper. Cf. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90.

U. S. GOVERNMENT PRINTING OFFICE: 1942